IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6425 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ASHOKBHAI RAMNIKLAL KANKHARA

Versus

STATE OF GUJARAT

Appearance:

M/S THAKKAR ASSOC. for Petitioner

MR RC KODEKAR for Respondent No. 1 to 3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 01/09/2000

ORAL JUDGEMENT

1. The order of detention dated June 28, 2000 passed by the District Magistrate, Jamnagar in exercise of powers conferred on him by sub-section-2 of section-3 of

the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 ("the Act" for short) against the petitioner is subject matter of challenge in the present petition which is filed under Article-226 of the Constitution.

2. The grounds of detention supplied to the detenu indicate that the petitioner was the Manager of M/s. Kirti Petrol Pump, Lalpur By-pass, Jamnagar wherefrom adulterated petrol was being sold at more price than fixed by the authorities. Having regard to the materials placed before him, the detaining authority was satisfied that it was necessary to detain the detenu with a view to preventing him from acting in any manner prejudicial to the maintenance of supply of commodity essential to the community. Therefore, an order dated June 28, 2000 was passed by the detaining authority to detain the petitioner.

3. Heard the learned counsel for the parties.

4. Several contentions have been urged by the learned counsel for the petitioner while assailing the validity of the order of detention. However, it is not necessary to refer to all of them except one, which in my opinion, merits acceptance.

5. The learned counsel for the petitioner submitted that the detenu had sent representation dated July 10, 2000 to the detaining authority with a request to forward the same to the State Government for its consideration and as there was delay on the part of the detaining authority in forwarding the same to the State Government, the continued detention of the detenu should be held to be illegal. This ground of challenge is raised in paragraph-3(S) of the petition.

6. On behalf of the State Government, Mr. P.R. Shukla, Deputy Secretary to Government, Food Civil Supplies and Consumer Affairs Department, Sachivalaya, Gandhinagar, has filed Affidavit-in-Reply controverting the averments made in the petition. In paragraph-5 of the reply, it is stated that on July 13, 2000, the District Magistrate, Jamnagar had sent incomplete representation of the detenu and therefore, on July 15, 2000, the District Magistrate was informed by telephonic message to send complete representation of the detenu to the State Government. It is further stated that the complete representation of the detenu was received on July 17, 2000 which was rejected by the State Government on July 20, 2000.

7. It is an admitted fact that the order of detention was approved by the State Government on 7/7/2000. In view of the decision of the Supreme Court in Navalshanker Ishwarlal Dave Vs State of Gujarat, AIR 1994 SC 1496, it was not open to the detaining authority to consider the representation of the detenu dated July 10, 2000 which was received by him on July 12, 2000 because only the State Government is the competent to revoke an order of detention after it is approved by it. On July 13, 2000, the detaining authority had forwarded incomplete representation of the detenu to the State Government. Why this was done is not explained by the detaining authority. As incomplete representation was received from the detaining authority, the State had no alternative but to inform the District Magistrate to send complete representation so that the same can be considered by the State Government. Accordingly, the telephonic message was sent on July 15, 2000 to send complete representation of the detenu. That request was complied with by the District Magistrate on July 17 2000. Thus, there is no manner of doubt that there is delay on the part of detaining authority in forwarding the representation of the detenu to the State Government. This delay has remained unexplained. Therefore, it will have to be held that the continued detention of the detenu has become illegal. It may be observed that similar view is taken by the Division Bench of this Court in Urmilaben Navnitlal Gandhi Vs The Commissioner of Police, Surat City and Otrs. 1994 (2) GLH (UJ) 10.

8. For the foregoing reasons, the petition succeeds. The continued detention of the detenu is held to be illegal. The respondents are directed to release the detenu immediately unless his presence is needed with reference to any other case. Rule is made absolute accordingly with no order as to costs.

(J.M. Panchal, J.)
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